

JUDGE FERNANDO RODRIGUEZ, JR.

United States Courthouse
600 East Harrison, #301
Brownsville, Texas 78520-7114
(956) 548-2755

Balvina Campos, Case Manager
United States District Clerk
600 East Harrison, Suite 101
Brownsville, Texas 78520-7114
Direct No.: (956) 548-2756
Balvina_Campos@txs.uscourts.gov
District Clerk's Office: (956) 548-2500

CIVIL PROCEDURES

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Last Updated: October 4, 2018

1. CONTACT WITH COURT PERSONNEL

- A. Case-related inquiries should be made by email only to the Case Manager, with a copy to all opposing counsel and *pro se* parties. Telephone inquiries are permitted only in an emergency. No inquiries may be made to Chambers.
- B. For civil matters, information about the filing of documents, entry of orders, or docket entries should be obtained from the Case Management/Electronic Case Files (CM/ECF) or Pacer systems, or from the District Clerk's Office at 956.548.2500.
- C. At the Court's direction, law clerks may occasionally contact counsel; however, they will not discuss matters other than the subject of the communication.
- D. Correspondence.
 - 1) Do not address substantive issues in letter form addressed to the Court because they may not be docketed or included in the appellate record.
 - 2) Case-related correspondence must be addressed to and e-filed with:

United States District Clerk
600 East Harrison Street, Suite 101
Brownsville, Texas 78520-7114
- E. Courtesy copies of urgent documents may be sent to Chambers (the Case Manager) simultaneously with the originals being filed with the Clerk of the Court.

2. EMERGENCIES

- A. Applications for restraining orders or other immediate relief must be made through the Clerk's office:

U.S. District Clerk's Office
600 E. Harrison Street, Suite 101
Brownsville, Texas 78520-7114
(956) 548-2500

 - 1) Applications shall be presented to the Court by the Case Manager following counsel's affirmation that the opposing party has been contacted and that both parties can be available for a conference before the Court.
 - 2) The Court will not entertain *ex parte* applications for restraining orders unless the requirements of Fed. R. Civ. P. 65(b) have been satisfied.
- B. Counsel shall contact the Case Manager at (956) 548-2756 for matters requiring immediate attention.
- C. Motions for extension of deadlines in the Scheduling Order are not emergencies.

- D. When filing any emergency motion, counsel shall send a courtesy hard copy of such motion directly to the Case Manager so that the motion quickly reaches the Court's attention.

3. ELECTRONIC FILINGS

- A. The Southern District of Texas requires the electronic filing of all pleadings. This reduces the burden on the Clerk's Office and increases the Court's efficiency.
- B. Generally, all pleadings in this District must be filed through the Electronic Case Filing System (ECF). Electronic filings shall be in accordance with Administrative Procedures for Electronic Filing in Civil and Criminal Cases. Answers to frequently asked questions regarding electronic filing may be obtained at the District Clerk's Office.
- C. The parties shall submit a courtesy hard copy to the District Clerk's Office of any filing that, including attachments, is 30 pages or longer. Both the courtesy hard copy and the electronic filing must be filed on the same day.
- D. Voluminous, double-sided, or irregular documents:
 - 1) Leave of Court is required for the conventional filing of documents greater than 50 pages in length. Such documents should be filed electronically when possible.
 - 2) Leave of Court is required for the conventional filing of documents printed on both sides. Such documents should be filed electronically when possible.
 - 3) Leave of Court is required for the filing of over-sized or irregularly shaped documents that are not capable of being readily imaged by court personnel and equipment. Such documents should be filed electronically when possible.

4. CONTINUANCES

- A. The Court intends to confer with counsel about trial scheduling at the Initial Pretrial Conference. Once a trial is scheduled, a continuance will be granted only in extraordinary circumstances. Joint motions for continuances are not binding on the Court. Trial will not be continued because of one or more witnesses' unavailability. Counsel should anticipate such possibilities and be prepared to present testimony by written deposition, videotaped deposition, or by stipulation.

5. APPEARANCES

- A. The attorney designated on the pleadings as Attorney in Charge must attend the Initial Pretrial Conference, the Final Pretrial Conference, and Trial. For all other appearances, the attorney substituting must be familiar with the case and have authority to make decisions binding on the represented party.
- B. If out-of-town counsel desire to appear by telephone, a written request should be made to the Case Manager as far as reasonably possible in advance of the conference. Email contact with the Case Manager is permitted. If permission to

attend by phone is granted, counsel making such a request shall make all of the necessary arrangements and bear all related expenses. Counsel shall inform opposing counsel that they will be attending by phone to give opposing counsel the same option. Counsel shall use only a landline phone.

- C. Counsel will notify the Case Manager immediately of the resolution of any matter that is set for trial or hearing.

6. INITIAL PRETRIAL CONFERENCE AND SCHEDULING CONFERENCES

- A. At a case's inception, the Court will issue an Order Setting Conference, which sets the date and time for the Initial Pretrial Conference. *See* sample Order Setting Initial Pretrial Conference at Appendix A.
- B. Shortly after the Court issues the Order Setting Initial Pretrial Conference, the Court will issue a Preliminary Scheduling Order. *See* sample Preliminary Scheduling Order at Appendix B. At the conference required by Federal Rule of Civil Procedure 26(f), the parties must discuss whether any party desires to request modifications to the Preliminary Scheduling Order.
- C. At least 5 days before the Initial Pretrial Conference, counsel must file a Joint Discovery and Case Management Plan, using the form Appendix C (sample Joint Discovery and Case Management Plan).

7. MOTION PRACTICE AND BRIEFS

- A. Motions to Sever and Motions for Separate Trial must be specific and filed at least 30 days before jury selection.
- B. Unless the Court orders differently, counsel must respond to an opposed motion within 21 days from the date the motion is filed with the District Clerk's Office. Failure to file a timely response shall be taken as an indication that the opposing party agrees to the motion and the relief requested.
- C. Requests for oral argument are not necessary. The Case Manager will notify counsel should the Court determine that a motion hearing would be beneficial. All ripe pending motions will be addressed at the next status conference unless counsel are specifically notified otherwise. If counsel anticipate the need to offer evidence and testimony in connection with the motion hearing, counsel must obtain the Court's leave to do so in advance.
- D. Briefs must be filed together with or incorporated within a motion, response, or reply. Briefs and legal memoranda shall be limited to 20 pages, unless the Court permits exceeding this limit.
 - 1) All briefs and memoranda exceeding five pages must contain an initial Statement of the Issues, which consists of a brief statement highlighting the issues before the Court, with the standard of review and supporting authority for each issue.
 - 2) Any brief or memorandum with more than ten pages of argument must also contain the following:

- Table of Contents
 - Table of Authorities
 - Summary of the Argument
 - Relief Sought: A short recitation of the precise relief requested.
- 3) References to evidence in support of or in opposition to a motion must be specific, citing page and line numbers for depositions, or page and paragraph number for any other type of exhibit. The Court discourages the filing of entire deposition transcripts and will not review portions of the transcript not expressly cited in the briefs and memoranda.

8. DOCKET CALL AND TRIAL

- A. The Court's Scheduling Order will establish the deadline for the plaintiff(s) to file the Joint Pretrial Order. *See* sample Joint Pretrial Order at Appendix D.
- B. Final Pretrial Conferences will be held on a monthly basis on designated days. Counsel should be prepared to discuss all matters related to the trial—e.g., jury selection, 404(b) matters, or motions in limine.
- C. Typically, the Court will pick 12 jurors and two alternates.
- D. During trial, the Court's hours will vary depending upon the type of case and the needs of the parties, the witnesses, the jurors, the Court, and counsel. The Court will normally convene trial at 9:00 a.m. and adjourn at 5:30 p.m., recessing for lunch between 12:00 p.m. and 1:30 p.m.
- E. The table nearer to the jury box is to be used by the plaintiff(s), with the table farther from the jury box to be used by the defendant(s). Once counsel have determined their seating arrangement, the Case Manager will note their position on a chart for the Court. Once trial has begun, this arrangement will not change, except at the Court's direction.
- F. Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. If "the Rule" has been invoked, counsel are also responsible for instructing their witnesses as to their duties thereunder. Witnesses shall be questioned while the attorney is standing at the podium unless otherwise instructed by the Court.
- G. The Court will accept the parties' agreement to use deposition testimony at trial even when the witness is available. Otherwise, parties must follow Fed. R. Civ. P. 32. A party may use videotaped depositions if counsel edit them to incorporate the Court's rulings on objections.
- H. Jury Trials
- 1) The Court will conduct the examination of the panel. Following this initial examination, the Court will consider counsel's request to question individual venire members outside the venire's presence.

- 2) Unless the Court permits otherwise, counsel should remain in or near the courtroom to be available for jury notes or a verdict while the jury is deliberating.
- 3) Once the trial has ended, counsel are permitted to attempt to contact jurors. The Court, however, will instruct the jurors that they may elect not to answer questions or discuss the case.

I. Trial Exhibits.

- 1) Prior to the Final Pretrial Conference, the offering party will mark each exhibit to be offered with the party's identity, case number, and exhibit number. Counsel for each party is required to provide the Court with a copy of that party's exhibits in a properly tabbed and indexed notebook.
- 2) As the first order of business, the Court will admit all exhibits offered without objection or for which objections have been overruled. All counsel are expected to agree to admissibility when possible so that the jury is not burdened with witnesses called to prove up mere formalities in situations in which all counsel are aware that no question about authenticity exists.
- 3) Counsel will not pass exhibits to the jury during trial without first obtaining the Court's permission. All admitted exhibits will go to the jury during its deliberations. Making sure all the admitted exhibits and only the admitted exhibits are in the Case Manager's possession for delivery to the jury is the duty of counsel. Making sure the Court has available the means for the jury to access all exhibits is the duty of the offering party.

J. Disposition of Exhibits Following Trial:

- 1) Exhibits that are not easily stored in a file folder (such as posters, parts, or models) must be withdrawn after the completion of the trial and substituted with reduced reproductions or photographs.
- 2) If there is no appeal, exhibits will be removed by the offering party within 30 days after disposition of the case.
- 3) When there is an appeal, the offering party will remove exhibits that the Court of Appeals returned within 14 days after written notice from the Clerk of the Court.
- 4) The Clerk of the Court will dispose of exhibits not removed, and the expenses incurred will be taxed against the offering party.

K. Equipment

- 1) The courtroom includes easels with writing pads and drawing boards, as well as a DVD/VCR. A Document Camera is available for projecting documents, including pictures, that are letter-sized or smaller. Counsel must provide any other equipment necessary to facilitate opening/closing arguments and presentation of the case (e.g., PowerPoint). Counsel must

inform the Case Manager/Court Reporter that counsel plan to use such other equipment prior to trial so arrangements can be made to accommodate building security.

- 2) Real-time reporting is not provided by the Court Reporter. Any requests for a transcript or portions thereof should be arranged directly with the Court Reporter.

9. SETTLEMENTS

- A. Upon the settlement of any case, counsel must immediately notify the Case Manager by email.
- B. Upon receipt of the parties' settlement announcement, the Court will enter an Order vacating all settings, mooting all pending motions, and allowing the parties 21 days to submit appropriate dismissal documents.
- C. Settlement in Cases involving Minor Plaintiffs
 - 1) If a potential conflict of interest exists between the parent(s)/guardian(s) and the minor, counsel will jointly move to appoint an attorney ad litem prior to any mediation or other Alternative Dispute Resolution procedure.
 - 2) If no conflict of interest exists between the parent(s)/guardian(s) and the minor, and the suit is settled, counsel will jointly move to appoint an attorney ad litem to represent the minor at the settlement hearing.
 - 3) If counsel cannot agree on an attorney ad litem, each counsel will submit the names of three proposed attorneys ad litem, and the Court may appoint one, or alternatively appoint one of its own choosing.
 - 4) All parties and attorneys must appear for the settlement hearing unless excused by the Court.

10. DECORUM

- A. Counsel and parties will comply with the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed and the Local Rules adopted by the Southern District of Texas regarding courtroom behavior described in Appendix E.

[APPENDICES]

Order Setting Initial Pretrial Conference

1. Counsel shall appear for an Initial Pretrial Conference:

_____, 201____, at _____ .m.
Before the Honorable Fernando Rodriguez, Jr.
United States District Judge
Third Floor-Courtroom No. 6
United States Courthouse
600 E. Harrison Street, #301
Brownsville, TX 78520

2. The Plaintiff(s) filing this suit, or the party removing this suit from state court, **SHALL SERVE THE OPPOSING PARTY OR PARTIES** with copies of this ORDER SETTING INITIAL PRETRIAL CONFERENCE.
3. The plaintiff must serve the defendant within 90 days of filing the complaint. The plaintiff's failure to file proof of service within that time may result in dismissal by the Court on its own initiative. *See Fed. R. Civ. P. 4(m)*.
4. Within 15 days of receiving this order, counsel must file a list of all entities that are financially interested in this litigation, including parent, subsidiary, and affiliated corporations, as well as all known attorneys of record. When a group description is effective disclosure, an individual listing is not necessary. Underline the names of corporations with publicly traded securities. Counsel must promptly amend the list when parties are added or additional interested parties are identified.
5. By the Initial Pretrial Conference, counsel will have interviewed their clients and read all readily available relevant documents.
6. By the Initial Pretrial Conference, counsel must have discussed the possible effectiveness of Alternative Dispute Resolution with their clients and each other. At the Initial Pretrial Conference, the Court will consider whether a method of Alternative Dispute Resolution is suited to this case.
7. At the Initial Pretrial Conference, the Court may rule on motions pending or made at the conference.
8. Failure to comply with this Order Setting Initial Pretrial Conference may result in sanctions, including dismissal of the action and assessment of expenses.

APPENDIX "A"

Preliminary Scheduling Order

Plaintiff must furnish a copy of this Preliminary Scheduling Order to new parties.

1. Motion to join new parties must be filed by: _____
2. Party with burden on an issue shall name expert(s) and produce report(s) by: _____
3. Rebuttal expert(s) shall be named and report(s) produced by: _____
4. Discovery must be completed by: _____

Counsel may agree to continue discovery beyond the deadline, but the Court will not intervene. Absent exceptional circumstances, the Court will not grant a continuance because of information acquired in post-deadline discovery.

5. Dispositive Motions and Motions to Exclude Expert Witness must be filed by: _____
6. Plaintiff(s) must file the Joint Pretrial Order by: _____
7. Parties must file motions in limine and objections to proposed trial exhibits and witnesses by: _____
8. Final Pretrial Conference is set for 1:30 p.m. on: _____

Court will schedule jury selection and/or trial date at Final Pretrial Conference.

Fernando Rodriguez, Jr.
United States District Judge

APPENDIX "B"

**JOINT DISCOVERY/CASE MANAGEMENT PLAN
UNDER FEDERAL RULE OF CIVIL PROCEDURE 26(f)**

Please restate each instruction before furnishing the information.

1. State where and when the conference of the parties required by Federal Rule of Civil Procedure 26(f) was held and identify the counsel who participated for each party.
2. List the cases related to this one that are pending in any state or federal court with the case number and court.
3. Specify the allegation of federal jurisdiction.
4. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.
5. List anticipated interventions, if any.
6. Describe class-action issues, if any.
7. State whether each party represents that it has made the initial disclosures required by Federal Rule of Civil Procedure 26(a). If not, describe the arrangements that have been made to complete the disclosures.
8. Describe the proposed agreed discovery plan, including:
 - A. Responses to all the matters raised in Federal Rule of Civil Procedure 26(f).
 - B. When and to whom the plaintiff anticipates it may send interrogatories.
 - C. When and to whom the defendant anticipates it may send interrogatories.
 - D. Of whom and by when the plaintiff anticipates taking oral depositions.
 - E. Of whom and by when the defendant anticipates taking oral depositions.
 - F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Federal Rule of Civil Procedure 26(a)(2)(B) and when the opposing party will be able to designate responsive experts and provide their reports.
 - G. List expert depositions that the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. *See* Federal Rule of Civil Procedure 26(a)(2)(B).
 - H. List expert depositions that the opposing party anticipates taking and their anticipated completion date. *See* Federal Rule of Civil Procedure 26(a)(2)(B).

APPENDIX "C"

9. If the parties are not agreed on a part of the discovery plan, describe each party's separate views and proposals.
10. Specify the discovery beyond initial disclosures that has been undertaken to date.
11. Specify any modifications to the Preliminary Scheduling Order that one or more parties requests.
12. Describe what each party has done or agreed to do to bring about a prompt resolution of the case.
13. State the Alternative Dispute Resolution techniques that are reasonably suitable and state when such a technique may be effectively used in this case.
14. Magistrate judges may now hear jury and non-jury trials. Indicate each party's respective position on a trial before a magistrate judge.
15. State whether a jury demand has been made and if it was made on time.
16. Specify the number of hours presenting the evidence in this case will take.
17. List pending motions that could be ruled on at the Initial Pretrial Conference.
18. List other motions pending.
19. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the Court at the Initial Pretrial Conference, and/or that could facilitate a prompt, efficient, and cost-effective preparation of the case.
20. List the names, bar numbers, addresses, and telephone numbers of all counsel.

REQUIRED CONTENTS OF THE JOINT PRETRIAL ORDER

1. **Appearance of Counsel.** List each party, its counsel, and counsel's address and telephone number in separate paragraphs.
2. **Statement of the Case.** Give a brief statement of the case that the Court can read to the jury panel for an introduction of the facts and parties; include names, dates, and places.
3. **Jurisdiction.** Briefly specify the basis for the Court's jurisdiction of the subject matter and the parties. If an unresolved jurisdictional question exists, state it.
4. **Motions.** List pending motions.
5. **Contentions of the Parties.** State concisely in separate paragraphs each party's claims.
6. **Admissions of Fact.** List all facts that require no proof.
7. **Contested Issues of Fact.** List all material facts in bona fide controversy.
8. **Agreed Propositions of Law.** List the legal propositions that are not in dispute.
9. **Contested Propositions of Law.** State briefly the unresolved questions of law, with authorities to support each.
10. **Exhibits.**
 - A. On a form like the one provided by the Clerk of the Court, each party will attach four lists of all exhibits expected to be offered and will make the exhibits available for opposing counsel's examination. See sample at Appendix D-1. All documentary exhibits must be exchanged before trial, except for rebuttal exhibits or those whose use cannot be anticipated.
 - B. The Court's Scheduling Order will establish the deadline for parties to file objections to proposed trial exhibits. A party's failure to object in writing concedes authenticity and admissibility.
 - C. Parties must mark their exhibits to include the date and case number on each.
 - D. At the trial, the first step will be the offer and receipt in evidence of exhibits.

APPENDIX "D"

11. **Witnesses.**

- A. On a form similar to the one provided by the Clerk of the Court, each party will attach four lists with the names and addresses of witnesses who may be called with a brief statement of the nature of their testimony. *See sample at Appendix D-2.*
- B. If other witnesses to be called at the trial become known, their names, addresses, and subject of their testimony will be reported to opposing counsel in writing as soon as they are known; this does not apply to rebuttal or impeachment witnesses.

12. **Settlements.** State that all settlement efforts have been exhausted and that the case will have to be tried.

13. **Trial.** State estimated length of trial and logistical problems, including availability of witnesses, out-of-state people, bulky exhibits, and documentation.

14. **Attachments.** Each party must file as a separate document (captioned, signed by counsel, and with service certified) these required attachments in duplicate.

A. For a Jury Trial:

- (1) Proposed questions for the voir dire examination
- (2) Proposed charge, including instructions, definitions, and special interrogatories, with authority

B. For a Non-Jury Trial:

- (1) Proposed findings of fact with agreed and contested ones separated
- (2) Conclusions of law with authority

Approved:

Attorney-in-Charge, Plaintiff

Date: _____

Attorney-in-Charge, Defendant

Date: _____

UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS	
v.		BROWNSVILLE DIVISION	
		CIVIL ACTION NO. B-	
		EXHIBIT LIST	
LIST OF: TYPE OF HEARING:			
JUDGE: FERNANDO RODRIGUEZ, JR.	CLERK: BALVINA CAMPOS	REPORTER: SHEILA PERALES	

No.	DESCRIPTION	OFR	OBJ	ADM	DATE
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APPENDIX "D-1"

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UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS	
v.		BROWNSVILLE DIVISION	
		CIVIL ACTION NO. B-	
		WITNESS LIST	
LIST OF: TYPE OF HEARING:			
JUDGE: FERNANDO RODRIGUEZ, JR.	CLERK: BALVINA CAMPOS	REPORTER: SHEILA PERALES	
No.	NAME OF WITNESS		
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APPENDIX "D-2"

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Courtroom Etiquette

All individuals who appear in court must observe these and other conventions of courteous, orderly behavior.

- A. Be punctual.
- B. Remain in attendance until excused. All persons sitting before the bar shall remain there during each session and return after each recess. Parties and counsel must remain in attendance during jury deliberations; absence waives the right to attend the return of the verdict.
- C. Dress with dignity.
- D. Address others only by their titles, if applicable, and/or surnames, including lawyers, witnesses, and court personnel.
- E. Unless instructed otherwise, stand when the Court speaks to you; stand when you speak to the Court. Speak only to the Court, except for questioning witnesses and, in opening and closing, addressing the jury. Do not argue with each other.
- F. Avoid approaching the bench. Counsel should anticipate the necessity for rulings and discuss them when the jury is not seated. When a bench conference is unavoidable, get permission first.
- G. Hand to the Case Manager, not the judge or reporter, all documents or items tendered for examination by the judge.
- H. Stand when the judge or jury enters or leaves the courtroom.
- I. Contact with the law clerks is *ex parte* contact with the Court. Contact must be through the Case Manager.
- J. Assist in the summoning of witnesses from outside the courtroom. Furnish the Case Manager, marshal, and court reporter with a list of witnesses showing the order in which they are likely to be called.

APPENDIX "E"

- K. Question witnesses while standing at the lectern unless instructed otherwise by the Court. When it is necessary to question a witness about an exhibit, ask permission to approach the witness.
- L. Conduct no experiment or demonstration without permission.
- M. Do not participate in a trial as an attorney if you expect you may be called as a witness without prior permission of the Court.
- N. Avoid disparaging remarks and acrimony toward counsel and discourage ill will between the litigants. Counsel must abstain from unnecessary references to opposing counsel, especially peculiarities.
- O. Make no side-bar remarks.
- P. Counsel are responsible for advising their clients, witnesses, and associate counsel about proper courtroom behavior and about pertinent rulings of the Court such as rulings on motions in limine.
- Q. Request the use of easels, light boxes, and other equipment well in advance so that they may be set up while the Court is not in session.